

EXHIBIT

INTRODUCTION

Respondent Governor Schwarzenegger's California Recovery Team ("Respondent Committee") was formed in December 2003 as a controlled ballot measure committee. During all relevant times, Respondent Committee was controlled by Governor Arnold Schwarzenegger ("Respondent Schwarzenegger") and Respondent Thomas Hiltachk served as Respondent Committee's treasurer.

This matter arose from a formal complaint following the March 29, 2006, decision of the Third District Court of Appeal, finding that even though the issue presented was "technically moot" due to Respondents having filed the 24-hour campaign reports before the appellate court's ruling, the expenditures admittedly made by Respondent Committee for advertising to support Propositions 74, 75, 76, and 77 in the November 8, 2005, special election, meet the statutory definition of independent expenditures and should have been reported on a 24-hour basis during the 90 days before the election.

The Enforcement Division commenced an investigation and determined that Respondents committed 143 violations of the Political Reform Act (the "Act")¹ by failing to timely file online or electronic 24-hour reports disclosing approximately \$25,600,000 in independent expenditures made during the 90 days preceding the November 8, 2005, special election, for advertising to support Propositions 74, 75, 76, and 77.

For the purposes of this stipulation, Respondents' violations of the Act are stated as follows:

COUNTS 1-38: Respondents failed to timely file 38 required 24-hour campaign reports disclosing independent expenditures of approximately \$5,600,000 for advertising in support of Proposition 74, during the 90-day period preceding the November 8, 2005, special election, in violation of Government Code section 85500, subdivision (a).

COUNTS 39-67: Respondents failed to timely file 29 required 24-hour campaign reports disclosing independent expenditures of approximately \$7,300,000 for advertising in support of Proposition 75, during the 90-day period preceding the November 8, 2005, special election, in violation of Government Code section 85500, subdivision (a).

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

COUNTS 68-105: Respondents failed to timely file 38 required 24-hour campaign reports disclosing independent expenditures of approximately \$8,900,000 for advertising in support of Proposition 76, during the 90-day period preceding the November 8, 2005, special election, in violation of Government Code section 85500, subdivision (a).

COUNTS 106-143: Respondents failed to timely file 38 required 24-hour campaign reports disclosing independent expenditures of approximately \$3,800,000 during the 90-day period preceding the November 8, 2005, special election, in violation of Government Code section 85500, subdivision (a).

SUMMARY OF THE LAW

Duty to Disclose Contribution and Expenditure Activity

An express purpose of the Act, as set forth in section 81002, subdivision (a), is to ensure that receipts and expenditures affecting election campaigns are fully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Campaign Statements Electronically Within 24 Hours During an Election Cycle

In 1997, the Legislature amended the Act to require committees that are significantly active on the state level to file their campaign statements online or electronically as well as on paper. When doing so, the Legislature specifically declared, as set forth in section 84601, subdivisions (b) and (c), that public access to campaign disclosure information is a vital and integral component of a fully informed electorate, and that advances in technology have made it viable for disclosure statements required by the Act to be filed online, thereby maximizing their availability to the public.

The Act therefore sets forth an online campaign disclosure program. One feature of this program is set forth in section 84605, subdivision (b), which requires general purpose committees that receive contributions or make expenditures totaling \$50,000 or more to support or oppose candidates for elective state office or state measures, to file their campaign statements electronically, in addition to filing their campaign statements in a paper format.

Under section 85500, subdivision (a), a committee that is required to file electronic reports pursuant to section 84605 and that makes independent expenditures of one thousand dollars (\$1,000) or more during an election cycle in connection with a state ballot measure, must file online or electronically with the Secretary of State disclosing the making of the independent expenditure. Such reports are not required to be signed by the treasurer or controlling candidate, but are presumed to be filed under penalty of

perjury by the filer under regulation 18465.1. An independent expenditure is “an expenditure made by any person ... in connection with a communication which expressly advocates the election or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election by which is not made to or at the behest of the affected candidate or committee.” (Section 82031.)

For the purposes of section 85500, “election cycle” means and refers to the period of time commencing 90 days before an election and ending on the day of the election.

Liability of Treasurer and Assistant Treasurer

Under section 81004, subdivision (b), section 84100, and regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

COUNTS 1-143

(Duty to File 24-Hour Campaign Reports for Independent Expenditures of \$1,000 or More During an Election Cycle)

During the summer of 2005, the Governor called a special statewide election for November 2005. The election included four ballot measures promoted by Respondents: Propositions 74, 75, 76, and 77. Respondent Committee spent significant amounts on advertising to support each of the propositions. During the 90-day period preceding the election (the “election cycle”) Respondent Committee spent approximately \$25,600,000 for advertising in support of the propositions. Respondent Committee did not file the 24-hour campaign reports required by section 85500 for each expenditure of \$1,000 or more. Respondent Schwarzenegger was not involved in the decision to file or not file 24-hour independent expenditure reports.

Respondent Committee did, however, file two pre-election reports disclosing nearly all of the expenditures at issue. Those reports were filed on September 30, 2005, and October 27, 2005. Respondent committee also filed 24-hour late contribution reports disclosing the name, address, occupation and employer of contributors and the amount of the contribution received during the 90-day period.

In October 2005, Californians for Fair Representation - No on 77 (“No on 77”), a committee reportedly formed to oppose one of the special election ballot measures, filed a lawsuit in Sacramento Superior Court to compel Respondents to file required 24-hour reports regarding the expenditures in favor of Proposition 77. No on 77 sought a temporary restraining order and a preliminary injunction to compel Respondents to

immediately begin filing the required 24-hour reports. The trial court denied the temporary restraining order and preliminary injunction.

Following the trial court's denial of the temporary restraining order and preliminary injunction, No on 77 filed a petition for writ of mandate with the Court of Appeal. The appellate court was asked to review the trial court's denial of the requested injunction. On March 29, 2006, the Court of Appeal issued an opinion providing in pertinent part: "...although the issue is technically moot, we shall exercise our discretion to decide it because it is an important issue of public interest, likely to recur and evade appellate review." The Court then concluded that "the expenditures admittedly made by [Respondent Committee] meet the statutory definition of independent expenditures and should have been reported on a 24-hour basis during the 90 days before the election."

Thus, during the election cycle for the November 8, 2005, special election (August 10, 2005, through November 8, 2005), Respondents were required to file 24-hour campaign reports online or electronically within 24 hours of making an independent expenditure of \$1,000 or more. (Section 85500.) In this matter, Respondents were required to file 143 24-hour campaign reports for independent expenditures of \$1,000 or more for advertising to support Propositions 74, 75, 76, and 77.

The table below identifies the amounts Respondents expended in support of each of the subject propositions that were not timely reported.

Proposition	Approximate Total Amount of Independent Expenditures	Number of Delinquent Reports
74	\$5,600,000	38
75	\$7,300,000	29
76	\$8,900,000	38
77	\$3,800,000	38
	<u>Total:</u> \$25,600,000	<u>Total:</u> 143

CONCLUSION

Based on the foregoing, Respondents committed 143 violations of section 85500, which carry a maximum possible administrative penalty of \$715,000.

This case involves campaign disclosure violations. Campaign disclosure violations have historically resulted in stipulated administrative penalties ranging from the low to mid-to-high range of available penalties, depending on the facts and circumstances of each case such as the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent demonstrated good faith in consulting with Commission staff; whether the violation was isolated or part of a pattern; and whether the respondent has a prior record of violations of the Act.

This matter presents an issue of first impression, however, because the Commission has not previously imposed penalties for violations of section 85500. In light of the campaign disclosure requirements already in place at the time section 85500 was enacted, it is clear that the separate reporting requirements in section 85500 were intended to have independent significance. In this regard, the 24-hour reporting requirements of section 85500 are similar to the reporting requirement for late independent expenditure reports (LIERs) in that they contemplate disclosure of the campaign activity that occurs during the crucial period prior to an election. Thus, prior enforcement cases involving LIERs provide some guidance in determining the appropriate penalty in this matter. For LIER violations, the typical stipulated administrative penalty has varied depending on the surrounding circumstances, including the factors discussed above.

In this matter, the aggravating factors include the large amounts that were untimely reported and large number of untimely filed reports. There are, however, a number of factors in mitigation based on the unique circumstances involved in this matter: Respondents disclosed almost all of the subject independent expenditures before the November 8, 2005, special election on timely filed pre-election campaign statements; as a result, there was abundant information in the public domain alerting the public that Respondent Schwarzenegger was the major proponent of the propositions and that Respondent Committee was the primary source of funding and advocacy in support of the propositions; Respondents filed the delinquent 24-hour campaign reports, absent a court order compelling them to do so and before the Court of Appeals issued its opinion finding that Respondents had a duty to file the reports; Respondents' pre-election disclosure of almost all of the subject independent expenditures before the election showed a lack of intent to conceal the expenditures and the public was not deprived of the pertinent information; in litigation brought against Respondents for their failure to file the required 24-hour campaign reports, Respondents maintained and argued their belief, albeit mistaken, that they were not required by law to file the 24-hour campaign reports; and none of the propositions passed.

Balancing the seriousness of the violations against the mitigating factors, the facts of this case justify imposition of the agreed on administrative penalty of \$200,200.